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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,273	09/16/2003	George D. Hermann	06-516 US	3435
34704	7590	08/01/2008	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			RYCKMAN, MELISSA K	
ART UNIT	PAPER NUMBER			
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08/01/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/664,273	HERMANN ET AL.
	Examiner MELISSA RYCKMAN	Art Unit 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 April 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-49 is/are pending in the application.  
 4a) Of the above claim(s) 4,14 and 22 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5-13,15-21 and 23-49 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/21/08 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5-7, 15-21, 23-25, 30-33, and 42-49 are rejected under 35 U.S.C. 103(a) as being obvious over Pierce (US 5893878) and further in view of Bramstedt (US 2706987).

Claims 1,19: Pierce teaches an insert (44) for attachment to a jaw-type surgical instrument (Fig. 1) adapted for grasping or occluding a vessel, said insert comprising a compliant cushion (22) having a tissue-engaging contact surface (24) and having a plurality of molded, hooked traction elements on at least a region of said surface (fig. 1),

wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13).

Pierce teaches the claimed invention including a jaw attachment member on the back surface (Fig. 6, where 30 matches up with 46), Pierce does not teach said insert further comprises a back surface opposite to said contact surface. However, Bramstedt teaches said insert further comprises a back surface opposite to said contact surface (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a back surface of the jaw attachment member, opposite to the contact surface, as this makes the contact surface easier to control, and possible to control in a precise manner.

Claims 2,3,20,21: Pierce teaches said molded, hooked traction elements are configured to have at least two crook (fig. 13, 80 and 24).

Claim 48: Pierce teaches the method of occluding a vessel or other body conduit comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw (44) having a compliant clamping surface (24) adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements on at least a region of said surface (Fig. 13); (b) contacting said clamping surface with a vessel or other body conduit (abstract, lines 1-3); and (c) actuating said instrument to occlude said vessel or other body conduit (abstract, last two lines), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13).

Claim 49: Pierce teaches a method of grasping tissue comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw (44) having a compliant clamping surface (24) adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements on at least a region of said surface; (b) contacting said clamping surface with tissue (abstract, lines 1-3); and (c) actuating said instrument to grasp said tissue (abstract, last two lines), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13).

Claims 15-18 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce.

Pierce teaches an insert for attachment to the jaw of a surgical clamp, said insert comprising a compliant cushion (24) having a tissue-engaging contact surface and a plurality of molded, hooked traction elements located on at least a region of said surface (fig. 13), wherein when said insert is attached to said jaw, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13), but fails to disclose the tractive force of the device as being of between about 6 and 8 pounds, or 1.5 to about 2.5 pounds is provided on a vessel clamped by the clamp. Since the device of Pierce teaches all structural limitations as set forth by independent claims 15, 17, 30 and 32, it is inherent that the device is capable of performing the function required by the claims, that being providing traction forces of either 6-8 pounds or 1.5-2 pounds.

Claims 5-7, 23-25 and 42-47:

Pierce teaches an insert (44) for attachment to a jaw-type surgical instrument (Fig. 1) adapted for grasping or occluding a vessel, said insert comprising a compliant cushion (22) having a tissue-engaging contact surface (24) and having a plurality of molded, hooked traction elements on at least a region of said surface (fig. 1), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13), but is silent regarding the height of the traction elements being no more than about .3mm. Bramstedt teaches surgical clamp inserts, wherein the traction elements are .004-.008 inches (Bramstedt, col. 1, ll. 35) in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Pierce with traction elements no more than .3 mm in height in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

Claims 8-13, 26-29 and 34-41 rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Bramstedt (US 2706987) as applied to claims 5 and 23 above, and further in view of Romanko et al. (US 6484371 ).

Pierce and Bramstedt teach all limitations of preceding dependent claims 5 and 23, and limitations of independent claims 13, 34 and 38 as described with, respect to claims 5 and 23, but fails to teach the density of hooked traction elements on the

surface is at least 300/cm<sup>2</sup>. Regarding the limitation wherein the density of the hooked traction elements on the surface region is at least 300/cm<sup>2</sup>, Romanko teaches wherein the density of the hooked traction elements may be up to 465 elements per square centimeter or less. It would have been an obvious matter of design choice to provide Pierce and Bramstedt with a traction element density of 300/cm<sup>2</sup>, since applicant has not disclosed that providing such a density provides any advantage over other densities, and providing a density of 300/cm<sup>2</sup> is well known in the art.

#### ***Response to Arguments***

Applicant's arguments filed 4/8/08 have been fully considered but they are not persuasive. The applicant generally argues:

- Pierce is not an insert
- Bramstedt and Romanko do not teach the device being used to grasp tissue.

The examiners position, is Pierce is an insert, as element 22 is connected to element 46, Fig. 6. Bramstedt and Romanko teach a device appropriate for use with a jaw-type surgical instrument. The claim states the instrument is adapted for grasping or occluding a vessel, and the devices of Bramstedt and Romanko meet this claim limitation.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/Darwin P. Erezo/  
Primary Examiner, Art Unit 3773